

INTER-OFFICE MEMORANDUM LEGAL DEPARTMENT

TO: MAYOR STEPHEN J. LUECKE

FROM: CHARLES S. LEONE - CITY ATTORNEY

SUBJECT: LEGAL DEPARTMENT ANNUAL REPORT - 2007

DATE: JANUARY 16, 2008

I. OVERVIEW

In 2007 the City of South Bend Legal Department continued its role of providing support, advice and representation to various units of the City of South Bend and representing the City in litigation in state and federal courts and before administrative agencies.

During 2007, the nine attorneys of the City Attorney's staff provided assistance to all of the departments and divisions within the City of South Bend, together with various City and City-related boards, commissions, corporations, and authorities, including the Alcoholic Beverage Board, Human Rights Commission, Board of Zoning Appeals, Redevelopment Commission, Redevelopment Authority, Board of Public Safety, Board of Public Works, Park Board, Century Center Board, Historic Preservation Commission, South Bend Building Corporation, Sister Cities of South Bend, Inc. and South Bend Common Council.

The Legal Department provides advice and direction to each of these departments and entities with respect to the conduct of their business under local, state, and federal law so that each entity will operate in compliance with all legal requirements. The department also represents the City in disputes in state and federal court and before administrative agencies in order to protect the City's interests when the City has been named as a defendant in lawsuits or administrative actions or to advance the City's interests when the City has a claim against another person or entity and litigation is the only way to achieve the goal of advancing and protecting the City's interests.

The department also engages in negotiations with outside parties to establish the City's role in various projects and undertakings and prepares a variety of documents to memorialize the relationships which have been established and to provide the framework for ongoing relationships.

Legal Department staff remained unchanged during 2007.

II. HIGHLIGHTS OF 2007

In 2007, the Legal Department and Code Enforcement worked with the St. Joseph County Auditor and Treasurer to establish procedures and forms to certify code enforcement civil penalties and demolition costs as special tax assessments, giving those City liens priority with other taxes on real estate ahead of mortgages and other lien interests. First year collections under this new procedure exceeded \$99,000.00.

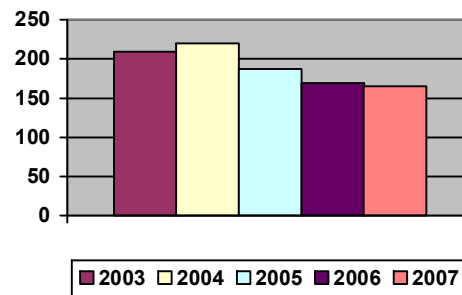
In 2007 the Department continued operation of a fourth year of the South Bend Local Government Academy to better communicate the role and operations of the City to local community leaders and to the public at large.

III. LIABILITY SELF-INSURANCE

The department managed the City's self-insurance liability program, paying out \$439,503.35 in claims against the City in 2007. If the risks covered by the self insurance program had been fully insured, the estimated premiums would have been in the \$2.5 Million to \$5 Million range. The cost savings are thus substantial although the amount of payout varies from year to year. The history of the City's liability self-insurance cost is as follows:

| Year | # of New Claims Filed | # of Claims Paid | Claims Paid | Year-End Claims & Suits Pending |
|------|-----------------------|------------------|----------------|---------------------------------|
| 1998 | 249 | | \$ 411,221.79 | |
| 1999 | 343 | | \$ 446,104.48 | |
| 2000 | 245 | | \$1,102,372.60 | |
| 2001 | 352 | | \$ 648,242.73 | |
| 2002 | 220 | | \$ 341,655.19 | 63 |
| 2003 | 209 | 118 | \$ 332,005.11 | 56 |
| 2004 | 220 | 125 | \$ 330,949.26 | 60 |
| 2005 | 187 | 125 | \$ 813,481.69 | 36 |
| 2006 | 169 | 90 | \$ 401,769.01 | 45 |
| 2007 | 165 | 89 | \$ 439,503.35 | 48 |

NEW LIABILITY CLAIMS HISTORY



Claims paid in 2007 were below the five-year average. New claims continue at historically low levels, demonstrating effective City-wide departmental leadership in reducing risks of operations. Claims backlog also continues at a low level.

The claims review process, in conjunction with the defense, negotiation, and settlement process, assists City departments in identifying areas of risk and engenders discussion and action on the best ways to manage that risk.

In 2007, the statutory limit for claims against governmental entities and employees was \$500,000.00. The limit increased in 2008 to \$700,000.00. No currently pending cases subject the City to risk at these higher limits.

IV. PROSECUTION OF ORDINANCE VIOLATIONS

The Legal Department also prosecutes claims in the local courts for violations of City ordinances, occasionally through the injunction process, but most often through civil actions to collect fines. During 2007, \$103,745.00 was collected through the Legal Department for ordinance violations and other miscellaneous accounts for various departments.

The history of total collections is as follows:

| | |
|------|--------------|
| 1998 | \$ 70,797.92 |
| 1999 | \$ 75,446.00 |
| 2000 | \$ 78,713.17 |
| 2001 | \$114,053.78 |
| 2002 | \$122,226.37 |
| 2003 | \$160,036.66 |
| 2004 | \$161,466.00 |
| 2005 | \$193,846.25 |
| 2006 | \$152,268.00 |
| 2007 | \$103,745.00 |

Under statutory provisions which became effective on July 1, 2006, the City Clerk's authority to collect fines increased from \$100.00 to \$250.00, thus significantly reducing the referrals of unpaid tickets to the Legal Department. For example, ordinance violations tickets referred to the Legal Department for collection declined from \$252,750 in 2003 to \$177,919 in 2007.

A breakdown of the history for the collection of ordinance violations, which include code enforcement, noise violations, parks infractions and any other miscellaneous violation of City ordinances, and parking ticket violations is as follows:

| | <u>Ordinance Violations</u> | <u>Parking Tickets</u> |
|------|-----------------------------|------------------------|
| 2000 | \$30,544.17 | \$17,866.00 |
| 2001 | \$70,737.27 | \$15,703.00 |
| 2002 | \$82,005.55 | \$17,168.00 |
| 2003 | \$96,008.56 | \$13,736.65 |
| 2004 | \$92,065.00 | \$25,122.00 |
| 2005 | \$91,060.23 | \$21,839.00 |
| 2006 | \$85,869.98 | \$14,713.00 |
| 2007 | \$58,878.00 | \$12,973.00 |

The Department will review its collection processes in 2008 to obtain greater efficiency in collections.

V. SPECIAL TAX ASSESSMENTS

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VI. LEGISLATIVE SERVICES

Legislative work of the department includes preparation of proposed ordinances to be submitted to the South Bend Common Council, review of proposed state legislation pending before the Indiana General Assembly, and monitoring of proposed federal legislation which could affect municipal operations.

Local legislative efforts involved work on consumer fireworks regulations, registration of vacant and abandoned properties and restrictions on front-yard parking.

VII. TRAINING ON LEGAL ISSUES

The Legal Department also provides information and training to City employees on changes in the law. Members of the City Attorney's staff have provided training to Uniformed Officers of the South Bend Police Department and the South Bend Human Rights Commission, and Code officials from other parts of Indiana through IACT with respect to various issues.

Department lawyers also served as faculty for a St. Joseph County Bar Association seminar on Municipal Law and provided instruction to other lawyers on First Amendment issues at the Indiana Municipal Lawyers Association conference this past summer in Indianapolis.

VIII. LOCAL GOVERNMENT ACADEMY

The Legal Department continued its ten-week Local Government Academy in 2007 to introduce residents to City operations and encourage them to participate in local government. City employees served as the faculty and the "classroom" traveled to the Street, Police and Fire Departments, O'Brien Center, the Morris Performing Arts Center and Palais Royale, the Near Northwest and Riverpark Neighborhood Partnership Centers, and the Common Council Chambers, where class members presented an ordinance at a mock Council meeting. The class also took a bus tour of several redevelopment, public works and neighborhood projects.

Attendance at each Academy session has been approximately 25 students per session since beginning in the fall of 2004. The Academy showed people parts of the City they had never seen and how City government is working to serve them.

IX. LITIGATION

At the end of 2007, the Legal Department was involved in the following litigation on behalf of the City of South Bend:

| <u>Litigation Area</u> | <u>City as Plaintiff</u> | <u>City as Defendant</u> | <u>Pending Claims</u> |
|-------------------------------|--------------------------|--------------------------|-----------------------|
| Code Enforcement | 56 | 6 | |
| Injunctions | 25 | | |
| Animal Warrants | 45 | | |
| Police Actions | | 9 | |
| Vehicles Accidents | | 6 | 3 |
| Personal Injury (not vehicle) | | 9 | 2 |
| Equal Employment Opp. Comm. | | 4 | |
| Foreclosures | 2 | 242 | |
| Bankruptcy | 2 | | |
| Miscellaneous | 7 | 5 | 3 |
| Total | 137 | 281 | 8 |

The department filed significantly fewer Code Enforcement lawsuits in 2007 because of the initiation of the special assessment process to certify Code penalties and costs on property tax bills.

Minor miscellaneous matters not included in this table are infraction cases in Small Claims Court and Code Enforcement collections in Small Claims Court.

The Legal Department also participated in 9 mediation sessions in 2007 in an attempt to resolve disputes in litigation. Department attorneys also participated in the following administrative hearings in 2007:

| <u>Agency</u> | <u>Number of Hearings</u> |
|------------------------------------|---------------------------|
| Human Rights Commission | 13 |
| Code Enforcement | 71 |
| License Appeals | 12 |
| Unemployment Hearings | 3 |
| Board of Zoning Appeals | 12 |
| Joint Grievance Committee Hearings | 3 |

In 2007, the Legal Department was active in pursuing the drug and disorderly house ordinance. A total of 218 Notices to Abate under the Drug House Ordinance and 55 Notices to Abate under the Disorderly House Ordinance were sent to owners/occupants in the City. Three (3) of these notices resulted in the filing of injunction lawsuits.

Significant litigation concluded during 2007 included the dismissal of Richard Alexander's appeal in the United States Court of Appeals from the City's summary judgment relating to Mr. Alexander's wrongful conviction and imprisonment, a bankruptcy ruling requiring property owners to comply with Code Enforcement rulings even after they have filed bankruptcy, and dismissal of proceedings against the City relating to enforcement of an injunction against abortion protestors.

X. TRANSACTIONAL ASSISTANCE

During 2007, Department attorneys prepared approximately 344 agreements, resolutions and documents conveying real estate interests in transactions in which the City was involved, primarily for the Department of Community and Economic Development and Department of Public Works.

XI. NEGOTIATIONS

Negotiations during 2007 involving department attorneys included collective bargaining with Teamsters Local 364, settlement negotiations and mediation to resolve pending claims and litigation, and project term negotiations to assist economic development activity.

XII. CIVIC AND PROFESSIONAL PARTICIPATION BY STAFF ATTORNEYS

During 2007, several of the attorneys in the Legal Department participated in activities which contributed to the City's presence and to their own professional development. These activities include service on the IACT Legislative Committee, St. Joseph County Bar Association Presidency and Board of Governors; Character and Fitness Committee of the Indiana Supreme Court; Pro Bono Committee and Bench and Bar Committee of the St. Joseph County Bar Association; Robert A Grant Inn of Court; Indiana State Bar Association American Citizenship Committee; Indiana Municipal Lawyers Association Presidency and Members; the St. Joseph County Bar Association Municipal Law seminar and Local Practice Seminar Planning Committee, and the Indiana Association of Cities and Towns.